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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/342,310	10/02/97	WATTERSON	S 2727.1US

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QM41/0623

EXAMINER

RICHMAN, G

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 06/23/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/942,810

Applicant(s)
Watterson et al

Examiner
Glenn Richman

Group Art Unit
3764



☒ Responsive to communication(s) filed on 6/4/99

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 21-37 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 21-37 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3733

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 21-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No.5,772,560. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to use a gas spring as a lift means.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rorabaugh in view of Teague, Jr.

Rorabaugh discloses a support structure (37), and a tread base rotatably attached to the support structure such that the tread base is selectively moveable between an operating position and a storage position (col. 4, lines 50-57).

Rorabaugh does not disclose a gas spring connected between the support structure and the tread base.

Teague, Jr. discloses a gas spring (56) used for assisting the lifting of a bed base (2) into a support structure (fig. 1).

It would have been obvious to use Teague, Jr's gas spring with Rorabaugh, as it is well known to use a gas spring between a support structure and a base, as taught by Teague, Jr., to provide an assist in moving the support structure into a storage position.

As for claims 22-24, Rorabaugh further discloses a motor mechanically coupled to the continuous belt (22), the tread base has a front end and a rear end and wherein the tread base is rotatably attached to the support structure at a point adjacent the front end of the tread base (fig. 2), and a flywheel (30).

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As for claims 25, 29, 30, in addition to the limitations discussed above, Teague, Jr., further discloses lift assist means (56), and a pneumatic cylinder (56).

Claim Rejections - 35 USC § 103

4. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rorabaugh in view of Teague, Jr. as applied to the claims above, and further in view of Schoneneberger.

Rorabaugh and Teague, Jr. do not specifically detail a latch for securing the folding device.

Schoneneberger discloses a conventional catch means for securing a tread base when in the storage position (col. 2, lines 14-18).

It would have been obvious to use Schoneneberger's catch means when Rorabaugh and Teague, Jr.'s are in the storage position, as it is well known to use a catch means, as taught by Alleman, for holding a base frame in a storage position.

Claim Rejections - 35 USC § 103

5. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rorabaugh in view of Teague, Jr. as applied to the claims above, and further in view of Wilkinson et al (622).

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Rorabaugh and Teague, Jr. do not disclose feet rotatably coupled to a rear end of a tread base for selectively varying the inclination of the tread base.

Wilkinson et al disclose feet rotatably coupled to a rear end of a tread base for selectively varying the inclination of the tread base (claim 19).

It would have been obvious to use Wilkinson et al's means for adjusting the inclination of a tread base, with Rorabaugh, as it is well known to use adjustable legs, as taught by Wilkinson et al, for changing the inclination of a tread base.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yu et al disclose a latching device used in the storage position of a treadmill.

Salm et al disclose a collapsible treadmill device.

Rullis discloses a folding bed assembly using a gas spring as an assist.

Herrera discloses a damping means for swivel able furniture.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is (703)308-3170. The examiner can normally be reached Tuesday through Thursday from 7:30 AM to 6:00 PM Eastern time. The facsimile number for Art Unit 3764 is

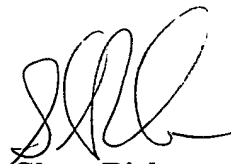
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(703)308-0758. The facsimile number for submitting formal papers to Technology Center 3700 is (703)305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 3730 receptionist whose telephone number is (703)308-0858 or to Customer Service at (703)305-8283


gr

June 18, 1999



Glenn Richman
Primary Examiner
AU 3764